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ABSTRACT

New directions that state legislatures have taken in regard to accountability in higher education are reviewed, along with the way that the relationship between the legislature and higher education is changing as a result of new developments. In response to public criticism that the legislature is too responsive to pressure groups, does not do its business in public, and does not oversee public agencies adequately, legislatures enacted Sunshine laws, requiring a large part of public business to be conducted in public, and Sunset laws, providing for periodic review (and possible elimination) of public agencies. Management and performance oversight of state agencies has also been expanded, and a variety of new budget systems that are designed to provide more information about, and evaluation of, efficiency of operations have been adopted. Another change in the legislative role that will have implications for higher education is the addition of more legislative staff for policy-making. Traditional expectations of the legislature about higher education and the relation it should have to the legislature include the following: the relationship between the two groups was a personal one, control of higher education was vested in a lay board and was insulated from direct political control, and higher education would prepare people for useful jobs. New expectations or developments include the following: the legislature should exercise oversight over higher education; coordination, regulation, policy-making, and some control of education is necessary at the state level; a coordinated and centralized communication between higher education and the legislature has evolved; and private institutions have become organized in most states. It is suggested that there will be future emphasis on planning policy analysis, evaluation, performance audit, and other formal analytic methods of assisting decision-making. (SW)

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LEGISLATIVE EXPECTATIONS ABOUT THE ACCOUNTABILITY OF HIGHER EDUCATION

John Folger

Educators are concerned about the new pressures they face, and the list of current concerns has been adequately described in previous sessions of this conference: leveling enrollments, budgets that do not keep up with inflation, problems in the job market for graduates in many fields, and new state level and federal regulations, reports and controls.

Educators often overlook the fact that everybody else has problems too, and among the groups that have some new problems are the members of the legislature. One of the problems that legislators share with educators is decreased public confidence in the way they are doing their jobs. Public opinion polls show that the ratings of education have slipped, although higher education still gets relatively high marks among the public institutions in American society. The same polls show that public regard for the legislature is also lower. A decline in public confidence is a much more serious and immediate problem for legislators, because they depend on public support to stay in office.

While much of the change in the rating can be attributed to increased skepticism about the effectiveness of all our institutions, public interest groups and some parts of the press have been more specific in their criticism: the legislature is too responsive to pressure groups, does not do its business in public, and does not oversee public agencies with enough vigor.

The response of legislatures has been swift. Sunshine laws of various degrees of stringency have been enacted in more than forty states, requiring a large part of public business to be conducted in public. Sunset laws, providing for periodic review (and possible elimination) of public agencies, have been passed in over half the states in a two-year period following the Colorado law of 1975. State fiscal audit agencies have been expanded to include performance audits and management audits of public agencies, or new legislative audit agencies have been created to conduct management and performance oversight of state agencies. More than twenty states have taken some action to develop performance audits in the last three or four years.

Legislatures are putting organization into place so that they can respond to one of the criticisms, that they do not do enough about oversight. Most of these new procedures have not had much time to function; so the record is still open about how much difference these changes will make. The cynics will say it is just a fad, and like some of the other legislative reforms will have little or no

lasting effects on the way decisions are made and funds are allocated. My view is different. Oversight and audit are likely to continue to be legislative interests. It can help politically. Many politicians have advanced their careers as crusaders in the public interest, and fighting the creeping growth of bureaucracy is a perennially popular vote getter, whether the bureaucrats be federal or state. In the second place, it does not cost much to add a few program auditors, and there is always the hope, as in the search for sunken treasure, that the auditors will find a useless program or agency, and actually get the legislature to save some money by abolishing it. In this area of trimming the bureaucratic fat, when all is said and done, much more is said than done, but I think this is an activity that is here to stay.

The Education Commission of the States asked Marvin Petersen of the University of Michigan and Bob Berdahl of the State University of New York at Buffalo to look at two different aspects of state legislative – higher education relations, and much of what I have to say about this area comes from their work, which I want to acknowledge. A report on their case studies was published in the Jossey-Bass New Directions series entitled, *Increasing the Public Accountability of Higher Education* (Winter, 1977).

Legislators have had increasing problems with another major area of responsibility, the budget. Expenditures of state governments have grown more rapidly than the growth of federal expenditures or the growth of the gross national product. Even in small states, state government has become a billion dollar a year business, and new and more businesslike budget procedures are necessary. Most of the initiative for budget reform has come from the budget specialists on the executive side in state government, but legislators have also played an active role.

Legislatures have changed by adding budget staff; a process that was documented by Lyman Glenny and his colleagues in the series of budget studies they completed last year. Legislatures have also adopted new budget systems, such as PPBS, Zero-Based Budgeting, Priority-Budgeting, and Performance-Budgeting. These new systems seek a more functional and programmatic classification of proposed expenditures, together with different kind of review and evaluation of proposed expenditures. These budget systems are designed to provide more information about, and evaluation of, efficiency of operations. They can be used, if appropriate outcome measures, or performance measures, are available, to make effectiveness judgments. The new systems require a great deal more data, require more sophisticated budget analysis and a professional staff, and conceptually are a major departure from traditional incremental budgeting.

The federal government and over half the states have initiated major budget systems reforms in the past decade. These "reforms" have often changed the

form of the budget without concurrent changes in the way that legislature made budgeting decisions, or even in some cases, without much change in the criteria on which decisions were made. As a result, there has been considerable disillusionment with the value of these changes.

Marvin Petersen's review of performance budgeting, which adds effective criteria to budget decisions, and which has been explored in about six or eight states in various ways, indicates that no one has yet developed a set of performance measures which makes a major difference in budget decision making. The efforts in Hawaii and Tennessee are the most extensive, but they have illustrated more of the complexity of the problems involved than of the procedures that can be recommended to others.

Because the size and scope of state budget operations has expanded so rapidly, and because legislators have taken a much more active role in the budget process in relation to the executive branch in most states than they used to do a decade ago, and because legislatures are moving closer to a year-round, full-time involvement and away from the sixty-days-every-two-years citizen legislature, the interest in budget reform will continue. I think that despite the frustrations with program budget systems, the legislature will continue to try to implement various types of more objective and rational resource allocation systems. They will also be attracted to formula budgeting within broad program areas such as higher education, because it helps to resolve allocation problems, and simplify decisions.

Another change in the legislative role that will have implications for higher education is the addition of more legislative staff for policy making. In the area of higher education alone, several states have added staff to the education committee; others have strengthened special policy analysis units in state government; and in still other states, the legislature has worked closely with the state agency for higher education in conducting policy studies and developing policy recommendations. As state-government operations get bigger and more complex, we are going to see more legislative staff examine policy questions. In some states they will depend primarily on the executive agencies or on the quasi-independent agencies for policy analysis, but in an increasing number of states they are developing their own legislative staff capability.

I have reviewed several new directions that state legislatures have taken in the last few years. These new activities will affect all parts of state government, including higher education, but higher education presents some special issues because of the tradition of autonomy of higher education and its insulation by lay trustees from direct political control.

Let me turn now to the more specific questions of the relationship between

the legislature and higher education and how that relationship is changing as a result of the new developments described above.

Let's begin with some of the traditional expectations of the legislature about higher education and the relation it should have to the legislature. The first is that the relationship was a personal one. While this varied from small to large states and by the personality of both legislators and college presidents, it was expected that each president would establish close ties with local legislators, would do a lot of his own lobbying, and would also establish close relations with key legislative leaders and committee chairmen. In a few states there was a central system executive who was the key contact point, and in those states there was a single person who could "speak for" higher education. But in most states up until about 1960 there was no single higher education leader, and each institution typically spoke for itself. In probably half the states with central governing boards, there was no central spokesman, only a secretary to the board, who only spoke when he was spoken to.

Second, in all states, the expectation was that direct control of higher education was vested in a lay board, insulating public higher education from direct political control. In actual fact this insulation was sometimes quite good and at other times non-existent, but it was a key aspect of legislative-education relations. Within this framework, higher education had academic freedom but was expected to be responsive to, and solicitous of, public expectations as interpreted by the legislature.

Another traditional expectation was that higher education would prepare people for useful jobs, give priority in admissions to citizens of the state, and be as good as the colleges in neighboring states in athletics, academics, and in general prestige.

From these traditional expectations some new ones have emerged. The first is that the legislature should exercise oversight over higher education just as it does for other agencies. If colleges get public funds they should be publically accountable. Constitutional status does not give higher education autonomy as a fourth branch of government. A court case has upheld this legislative view in Montana, while also limiting the direct controls that the legislature can impose on the budget management process. Related cases in Michigan and Nebraska have also constrained direct legislative involvement in management and budget.

The second expectation is that coordination, regulation, policy making, and some control of education is necessary at the state level. This is usually implemented through an executively proposed and appointed board which has been given specific and fairly limited powers by the legislature. There is now some kind of governing, coordinating, or planning board for higher education in every state but Wyoming, and most of them have been created since 1960.

Third, the tradition of every institution dealing with the legislature independently has been supplemented in many states with a coordinated and centralized communication. While individual institutions usually have informal communication, the statewide or multicampus system presents the budget, suggests policies, and supports or opposes proposed legislation that relates to the interest of higher education. The growth of higher education has created so many new public universities and community colleges that the legislature not only welcomes, but sometimes requires that a consolidated approach be used. They want the college presidents on the campus, not in the corridors of the legislature.

Fourth, in most states the independent institutions have gotten organized; in over thirty-five states they have employed a full-time executive, whose principal job is to represent the interests of the private sector in the state capitol, and in a large number of states, they have been successful.

What is the impact of these changes likely to be on future legislative-higher education relations? The answer will vary from state to state. In some, there has been no major change in the budget request, no new oversight process, no planning effort, and no policy analysis by either legislative or state higher education agency. These are mostly small states with strong executives, citizen legislatures with very limited staff, and a weak higher education agency or a statewide governing agency with a small staff. In states like this the relationship has not been affected much.

In other states the legislature has been expanding its staff, increasing its oversight, and may have changed its budget procedures too. Procedures are more formal, requests require more justification, more information is provided, and more analysis is done. More of analysis and policy alternatives are likely to get in the media and press because most of this process is conducted in public. Facts become more persuasive when analysed and presented effectively, and the silver-tongued presidential filibuster will turn off more people than it persuades. Personal acquaintance is still important, and the basic processes of compromise and advocacy of the institution by the legislator from the college's district continue in the actual legislative decision making. Thus from one point of view things have changed a lot, and from another, they are very much the same.

One other comment is important. The nature of the issues that legislators and educators are discussing is important too. In the past decade the issue was growth – how it could be paid for, how it should be accommodated. Growth has been a good thing in America, and when the chips were down, the legislators have come through on issues they thought were important, like growth and increased access for all students.

In the next decade the issues will be retrenchment and the management of stable or declining enrollments.

College graduates who cannot get jobs in the field they were trained for is a bad thing. Legislators will probably respond to that issue by blaming the colleges for not preparing the students. Declining enrollments in a college is also a bad thing. More of the issues that will arise in the next decade are going to be "bad" rather than "good" issues.

There is little political advantage to the legislature in trying to deal directly with issues of retrenchment and resource reallocation, and the legislative inclination will be to leave these issues to the educators. Legislators may intervene on behalf of their local institution to protect its budget in a period of declining enrollment, but higher education may get more autonomy to deal with its less attractive problems in the next decade.

At the same time, higher education is likely to be a popular area for legislative management and program audit, simply because it is an expensive area that is not operated according to conventional notions of efficiency. Higher education is also likely to have to conform to laws and regulations about affirmative action and social justice in dealing with a variety of minority groups.

More effective resolution of higher education's problems in the next decade will require much more effective planning and policy making at the state level, and more effective management at the institutional level. The legislature must have a much better understanding of the problems of higher education in order to make effective law and policy and provide the resources that are needed, without getting involved in the details of management which should be left to the institutions. Only a few legislatures have developed an appreciation of the value of planning and policy analysis as a way to improve their decision making. College presidents have also been slow to adopt new approaches to decision making.

The environment in the next decade both on the campus and in the legislature is likely to put much more emphasis on planning policy analysis, evaluation, performance audit, and similar formal analytic methods of assisting decision making. New specialists in these procedures will emerge, and they will have more influence on the relationship between the college presidents and the legislators. The president will still talk to his legislator, but an increasing part of the communication between the campus and the capitol will be done by specialists: college budget and policy analysts who talk to legislative staff, analysts who talk to the executive budget staff, and all may talk to the state higher education agency staff.

My expectation is that the relations between higher education and the legislature in the future will be more formal and bureaucratic. They will involve budget submissions in accordance with objective criteria, program and management audits, and more formal policy analysis and planning. Less will depend on personal and informal contact between legislators and educators, but that will still be very important.

States will move toward more formal and bureaucratic procedures at very different rates; the budget process is already formalized in all states, and policy analysis, legislative oversight, and evaluation will become formally established procedures in more states in the future. While personal contact and relationships will still be important, a new set of formal procedures will be developed in most states which college administrators must adapt to, along with all the other problems and issues. It is a prospect which is likely to shorten the already brief average tenure of college presidents.

It takes a commitment and desire on the part of an individual to expand his or her information sources. All legislators, administrators, researchers, and others dealing with higher education develop reliable sources of information such as personal correspondence, private conversation or selected journals with which they feel comfortable and use regularly. To expand on these sources takes both time and effort on the part of the individual. The computerization of bibliographic information for such information sources as ERIC and others as well as the development of techniques for searching this bibliographic information quickly and easily through the use of local computer terminals has decreased the time and effort necessary to make use of these sources.

Marilyn Shorr
ERIC Clearinghouse on Higher Education

The purview or overview function of the legislature in relation to higher education not only has increased but probably will continue to increase. Legislatures in a good many states have established auditing offices which while not primarily concerned with better education moved into this area very quickly. And they are auditing offices not simply in terms of fiscal audit but are moving into the area of performance audit as well. This does raise an important question on the institutional level and on the state coordinating level as well. Part of the question becomes who should judge academic effectiveness and quality?

Richard Millard
Education Commission of the States